

EXHIBIT B

CLASS SETTLEMENT AGREEMENT

Dated March 28, 2019 by and between

LivaNova Holding USA, Inc. and

**Representative Plaintiffs, Edward Baker and Jack Miller, Individually and on
behalf of the Certified Class**

TABLE OF CONTENTS

	<u>Page</u>
I. Definitions.....	2
A. Claimant/Class Definition.....	2
B. Other Defined Terms	2
II. Future Medical Monitoring.....	5
A. Continuation of Medical Monitoring by the Hospitals	5
B. Continuation of the Hospitals' Existing Medical Monitoring Protocols	5
III. Released Claims.....	6
IV. Dismissal of Fed. R. Civ. P. 23(f) Appeal	6
V. Class Counsel Fees and Class Representative Incentive Award.....	6
VI. Motion for Preliminary Approval of Class Action Settlement	7
VII. Notice, Bar Order and Objection Deadline.....	8
A. Notice of Class Certification and Class Action Settlement	8
B. Bar Order	8
C. Objection Deadline	9
VIII. Fairness Hearing	9
IX. Dismissal of Claims and Release.....	10
X. Covenant Not to Sue and Non-Solicitation.....	10
XI. Right to Terminate	10
XII. Stay of All Proceedings	11
XIII. Miscellaneous Provisions.....	11
A. Not Evidence; No Admission of Liability	11
B. Confidentiality	12
C. Entire Agreement	12
D. No Presumption Against Drafter	12
E. Force Majeure	13
F. Continuing and Exclusive Jurisdiction	13
G. Counterparts.....	13
H. Divisions and Headings	13
I. Plurals and Singulars of Defined Terms	13
J. Governing Law	14

K.	Waiver.....	14
L.	No Third-Party Beneficiaries.....	14
M.	Successors and Assigns.....	14
N.	Authority and Acknowledgment.....	14
O.	Construction.....	15
P.	Notice.....	15

CLASS SETTLEMENT AGREEMENT

This Class Settlement Agreement (“Agreement”) is made and entered into as of March 28, 2019 by and among the following parties (the “Parties”):

1. The Representative Plaintiffs, Edward Baker and Jack Miller, through Class Counsel (defined below), on behalf of themselves and each member of the class (“Class Members”) certified in the October 23, 2017 Certification Order (the “Class Certification Order”) entered in *Baker, et al. v. Sorin Group USA, INC.*, pending in the United States District Court for the Middle District of Pennsylvania, Civ. Action No. 1:16-cv-00260-JEJ (the “Class Action”); and
2. Defendant, LivaNova Holding USA, Inc., formerly known as Sorin Group USA, Inc. (“LivaNova”).

WHEREAS, the Class Action was filed against LivaNova;

WHEREAS, the claims asserted in the Class Action, including all charges of liability arising out of the allegations in the Class Action are denied;

WHEREAS, LivaNova has asserted various defenses to the factual allegations and legal claims in the Class Action and various defenses to the Class Certification Order, and believes those defenses to be meritorious; nonetheless, LivaNova has concluded that further proceedings in the Class Action would be protracted and expensive, and they desire to resolve the Class Action to avoid the costs of litigation;

WHEREAS, the Parties desire to fully and finally settle the Class Action in the manner and upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Representative Plaintiffs (for themselves and all Class Members as defined herein) through Class Counsel, and by LivaNova, all intending to be legally bound hereby, that, subject to the approval

of the Court, the Class Action shall be fully and finally resolved, compromised, discharged and settled among the Parties under the following terms and conditions:

I. Definitions

A. Claimant/Class Definition

Claimants include all Class Members, which are defined by the Class Certification Order as follows:

All individuals who underwent open heart surgery at WellSpan York Hospital (“WellSpan”) between October 1, 2011 and July 24, 2015 or at Penn State Milton S. Hershey Medical Center (“Hershey”) between November 5, 2011 and November 5, 2015 and who are currently asymptomatic for non-tuberculous mycobacterium (“NTM”) infection.

Claimant expressly excludes any individual who was diagnosed with an NTM infection subsequent to an open-heart surgery performed at WellSpan or Hershey during the relevant time periods. ECF Doc. 79 (October 23, 2017 Certification Order) at 3, 32.

B. Other Defined Terms

1. Class Counsel – the attorneys representing Plaintiffs in the Class Action, Sol H. Weiss of Anapol Weiss and William M. Audet of Audet & Partners, LLP, collectively referred to as “Class Counsel.”

2. Class Counsel Fees – the fee award as further described in Paragraph V herein and subject to the approval of the Court.

3. Court – the United States District Court for the Middle District of Pennsylvania and the Hon. John E. Jones, III.

4. Final Order and Judgment – a non-appealable order of the Court fully and finally approving the Settlement and dismissing the Class Action with prejudice.

5. Hospitals – Non-parties, WellSpan York Hospital (“WellSpan”) located in York, Pennsylvania and Penn State Milton S. Hershey Medical Center (“Hershey”) located in Hershey, Pennsylvania.

6. Mailed Notice – the Notice of Class Action Certification and Proposed Class Action Settlement to be mailed via first class mail, postage prepaid, to members of the Class at their last known home addresses in a form substantially identical to Exhibit A hereto, subject to Court approval.

7. NTM – non-tuberculous mycobacterium, including the subspecies of NTM known as *M. Chimaera*.

8. Objection Deadline – the date by which Class Members must submit a written statement of any objections to the Settlement to the Court.

9. Parties – LivaNova, Representative Plaintiffs and Class Members.

10. Preliminary Approval Order – the Order of the Court preliminarily approving this Settlement and Notice of Class Action Certification and Proposed Class Action Settlement, as described in Paragraph VI and substantially in the form attached hereto as Exhibit B.

11. Published Notice – the Notice of Class Certification and Proposed Class Action Settlement, substantially in the form attached hereto as Exhibit A, to be posted on Class Counsel, Anapol Weiss’, website at <https://www.anapolweiss.com/ntm-class-action/> where a document depository for the Class Action is maintained, upon approval of the Court.

12. Released Claims – any and all claims, demands, requests for payments, requests for benefits, requests for costs or expenses, requests for attorneys’ fees, requests for restitution, requests for punitive damages, requests for declaratory relief, requests for equitable relief, requests for sanctions, or requests of any kind or nature whatsoever that have been or could have

been asserted by or on behalf of any Representative Plaintiff or Class Member against any or all of the Released Parties, which arise out of or are related to any of the facts, acts, claims, allegations, events, transactions, occurrences, courses of conduct, representations, omissions, circumstances or other matters alleged or referred to or which could have been or may ever be alleged or referred to in, or occurred in litigating, the Class Action, whether known or unknown, and whether such claim was or could have been asserted by any Representative Plaintiff or Class Member on his or her own behalf or on behalf of other persons are herein referred to as the “Released Claims.” As described in Paragraph III herein, Released Claims expressly exclude any related personal injury and/or wrongful death claims brought by former Class Members.

13. Released Parties – LivaNova and its past, present, and future parents, subsidiaries, domestic and foreign corporations, divisions, affiliates, partners, joint venturers, dealers, distributors, component suppliers, service providers, stockholders, predecessors, successors, assigns, and insurers, and the past, present, and future officers, directors, employees, attorneys, agents, assigns, and representatives of each of the foregoing and any other person, firm, or corporation, domestic or foreign, with whom any of them is now or may hereafter be affiliated, and any other affiliated person or entity, whether individual, corporate, or otherwise, and each of them.

14. Representative Plaintiffs – Edward Baker and Jack Miller, on behalf of themselves and each Class Member.

15. Settlement – the settlement embodied in this Class Settlement Agreement.

16. 3T – the Sorin Stöckert 3T heater cooler device manufactured and/or marketed by LivaNova and/or any related entity, any and all of its components, and all products manufactured

and/or marketed by LivaNova and/or any related entity that have been used in connection with the use of such heater cooler.

II. Future Medical Monitoring

A. Continuation of Medical Monitoring by the Hospitals

The commitment by the Hospitals to continue to offer medical monitoring at no cost to Class Members who underwent open heart surgery at their respective hospital within the last five (5) years is accepted in full satisfaction of all Released Claims against the Released Parties. Medical monitoring is fully exclusive of and shall not include any medical treatment expenses incurred by any Class Member or Hospital in the event that a Class Member is diagnosed with an NTM infection.

B. Continuation of the Hospitals' Existing Medical Monitoring Protocols

The protocols currently governing WellSpan's NTM medical monitoring program were described in the April 11, 2018 deposition testimony of WellSpan Infectious Disease Physician and NTM Clinic Director, Eugene Curley, III, M.D. The protocols currently governing Hershey's NTM medical monitoring program were described in the May 29, 2018 deposition testimony of Hershey Infectious Disease Physician and Hospital Epidemiologist, Cynthia Whitener, M.D. Both WellSpan and Hershey's NTM existing medical monitoring protocols have been deemed adequate by Representative Plaintiffs' infectious disease expert, John J. Stern, M.D. and shall remain in full effect through the five (5) year anniversary of each Class Member's respective open-heart surgery. Except for the duration of medical monitoring, WellSpan and Hershey's NTM existing medical monitoring protocols shall not be impacted or modified in any way by this Settlement.

III. Released Claims

This Agreement fully resolves all Released Claims, including claims for Medical Monitoring (Count I) and request for Declaratory Judgment of a device defect pursuant to 28 U.S.C. § 2201 (Count II) asserted in the Class Action.

Notwithstanding the above language, this Settlement shall have no impact on the common law and/or statutory right of any Class Member or Class Member's representative to pursue personal injury and/or wrongful death claims against LivaNova, WellSpan York Hospital, WellSpan Health, Penn State Milton S. Hershey Medical Center or any other entity, in the event that a Class Member is diagnosed with an NTM infection.

IV. Dismissal of Fed. R. Civ. P. 23(f) Appeal

Prior to the filing of the Motion for Preliminary Approval of Class Action Settlement, LivaNova will cause the appeal pending in the United States Court of Appeals for the Third Circuit captioned *Baker, et al. v. Sorin Group USA, Inc.*, No. 18-3777 (3d Cir.), to be voluntarily dismissed. In the event that final approval is not granted, the above-referenced appeal may be refiled or otherwise reinstated.

V. Class Counsel Fees and Class Representative Incentive Award

LivaNova will not oppose or otherwise object to an application by Class Counsel for a reasonable and appropriate fee award in recognition of Class Counsel's successful pursuit of this Class Action and the significant effect this Class Action had in facilitating the global resolution of more than 100 civil actions consolidated for pre-trial purposes in the multi district litigation (MDL) styled as *In Re: Sorin 3T Heater-Cooler Products Liability Litigation (No. II)*, 1:18-cv-MD-2816-JEJ (M.D. PA) and various related civil actions filed in state courts throughout the U.S. where counsel have elected to participate in the MDL settlement. The Executive Committee for MDL 2816 used the generic liability discovery and generic liability expert reports

generated in this Class Action and has agreed to reimburse One Hundred Twenty-Eight Thousand Three Hundred Ten Dollars and Forty-Six Cents (\$128,310.46) representing those expenses.

LivaNova also will not oppose or otherwise object to an application for a reasonable and appropriate incentive award for Representative Plaintiffs, Edward Baker and Jack Miller, in recognition of their cooperation throughout the discovery process, which included, among other things, lengthy depositions and discovery responses that disclosed their personal medical information.

Neither the Released Parties, their counsel, nor Class Counsel, have made, nor will make, any representations as to the tax consequences of any incentive award provided to the Representative Plaintiffs, and they assume no responsibility or liability for payment of any local, state or federal taxes that may become due to the receipt of said incentive awards. Each Representative Plaintiff expressly agrees to indemnify the Released Parties, their counsel, and/or Class Counsel against and hold them harmless from all tax consequences, if any, arising out of taxes not being withheld from said incentive awards, including, but not limited to, any and all interest and/or penalties.

VI. Motion for Preliminary Approval of Class Action Settlement

Within five (5) days after full execution of this Agreement, pursuant to Federal Rule of Civil Procedure Rule 23(e), Representative Plaintiffs shall file an unopposed Motion for Preliminary Approval of Class Action Settlement that has been approved by LivaNova, together with a brief in support, this Agreement and the exhibits attached hereto, seeking entry of an Order granting preliminary approval of the Settlement. The Proposed Order shall be in the form attached hereto as Exhibit B (“Proposed Preliminary Approval Order”).

The Proposed Preliminary Approval Order shall:

1. Grant preliminary approval of this Settlement;
2. Authorize Notice of Class Certification and Preliminary Approval of Class Action

Settlement; and

3. Schedule a final Settlement Hearing to review comments or objections concerning this Settlement, to consider its fairness, reasonableness and adequacy, and to determine whether entry of an Order approving the Settlement ("Final Order and Judgment") substantially in the form described in Paragraph VIII is appropriate. The Settlement Hearing Settlement shall be scheduled to give sufficient time for notice to be disseminated and to allow for objections pursuant to the terms of the Settlement.

VII. Notice, Bar Order and Objection Deadline

A. Notice of Class Certification and Class Action Settlement

No later than fourteen (14) days after the Court has (1) entered the Preliminary Approval Order, and (2) approved the form and method of Class Notice, notice shall be sent to all Class Members via first class mail, postage prepaid, to their last known home addresses, published on Class Counsel, Anapol Weiss', website at <https://www.anapolweiss.com/ntm-class-action/>, and disseminated in any additional form as the Court shall direct; provided that the forms of Notice are substantially identical to the proposed Class Notice attached hereto as Exhibit A.

Class Counsel shall advance the reasonable cost of Notice, including costs for the mailing of the Mailed Notice, and any costs associated with the Published Notice.

B. Bar Order

Pursuant to the Class Certification Order, all Class Members will be bound by the terms of this Settlement and the Court's Final Order and Judgment approving this Settlement and any order affirming the Court's Final Order and Judgment, if any appeal is made.

C. Objection Deadline

Class members and any other person or entity who objects to this Settlement have a right to formally object no later than the Objection Deadline as follows. All objecting parties must submit a written statement of any objections to the Court. The written objections must be 1) physically received; or 2) clearly postmarked by the United States Postal Service or a commercial mail carrier no later than forty-five (45) days after the Court has entered the Preliminary Approval Order and approved the form and method of Class Notice.

VIII. Fairness Hearing

Representative Plaintiffs shall ask the Court to set the Settlement Hearing for a date that is no earlier than fifteen (15) days after the Objection Deadline (the "Settlement Hearing Date"). On or before the Settlement Hearing Date, Representative Plaintiffs shall move the Court for the entry of a Final Order and Judgment.

The Final Order and Judgment shall include:

1. Final approval of this Settlement in its entirety as fair, reasonable and adequate, and in the best interests of the Class as a whole;
2. A determination that all Class Members shall be bound by the Settlement and shall be deemed conclusively to have settled and released with prejudice the Released Parties and to have covenanted not to sue the Released Parties;
3. A bar order precluding each Class Member from asserting any and all Released Claims against any Released Parties in any court;
4. Dismissal of all Released Claims with prejudice as to the Released Parties; and
5. Reservation of the Court's continuing and exclusive jurisdiction over the Parties to administer, supervise, interpret and enforce this Agreement in accordance with its terms.

IX. Dismissal of Claims and Release

Upon the entry of the Final Order and Judgment, all Class Claims shall be dismissed with prejudice and all Class Members shall be deemed to have unconditionally, fully, finally, and forever remised, released, relinquished, compromised and discharged all Released Claims that were or could have been asserted against the Released Parties, whether or not any particular Class Member actually receives the medical monitoring described in Paragraph II herein.

X. Covenant Not to Sue and Non-Solicitation

Representative Plaintiffs and Class Members agree and covenant not to sue or to prosecute, institute or cooperate in the institution, commencement, filing, or prosecution of any lawsuit, appeal, arbitration or other proceeding relating to or based on any claim that concerns, arises out of or relates to any of the facts, actions, claims, allegations, events, transactions, occurrences, courses of conduct, representations, omissions, circumstances or other matters alleged or referred to, or which could have been alleged or referred to in the Class Action, with respect to the Released Parties.

Notwithstanding the above language, this Settlement shall have no impact on the common law and/or statutory right of any Claimant or Claimant's Representative to pursue personal injury and/or wrongful death claims against LivaNova, WellSpan York Hospital, WellSpan Health, Penn State Milton S. Hershey Medical Center or any other entity, in the event that a Claimant is diagnosed with an NTM infection.

XI. Right to Terminate

This Agreement may be terminated upon written notice within fourteen (14) days after any one of the following events:

1. If the Court denies preliminary approval of the Settlement or refuses to preliminarily approve the Settlement without requiring material changes to the Class Notice attached as Exhibit A to this Agreement.

2. If the Court denies final approval of the Settlement or refuses to finally approve the Settlement without requiring material changes to the provisions contained in the Final Order and Judgment as set forth in Paragraph VIII herein, in order to enter the Final Order and Judgment.

3. The Final Order and Judgment is materially modified or reversed on any writ or appeal.

In the event of any termination pursuant to the Agreement, the Parties shall be restored to their original positions.

XII. Stay of All Proceedings

The Parties have jointly obtained and shall continue to jointly seek an extension of a stay of all litigation pending entry of a Final Order and Judgment Approving this Settlement.

XIII. Miscellaneous Provisions

A. Not Evidence; No Admission of Liability

In no event shall this Agreement, in whole or in part, whether effective, terminated, or otherwise, or any of its provisions or any negotiations, statements or proceedings relating to it in any way be construed as, offered as, received as, used as or deemed to be evidence of the factual allegations and/or legal conclusions in the Class Action, in any other action, or in any judicial, administrative, regulatory or other proceeding, except as necessary to enforce this Agreement.

Without limiting the foregoing, neither this Agreement nor any related negotiations, statements or proceedings shall be construed as, offered as, received as, used as or deemed to be evidence, or an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the

part of the Released Parties or any applicable defense, including without limitation any applicable statute of limitations. This Agreement does not constitute or reflect any admission of any liability by the Released Parties of the claims brought against them in the Class Action. No Party waives or intends to waive any applicable attorney-client privilege or work product protection for any negotiations, statements or proceedings relating to this Agreement.

B. Confidentiality

The Parties agree that any and all documents, material, correspondence and/or information received and/or produced or disclosed in furtherance of this Agreement, including all drafts of this Agreement, shall be considered confidential and shall not be disclosed to any third parties, unless agreed upon in writing by the Parties or otherwise required by law.

C. Entire Agreement

This Agreement, including its Exhibits, contains an entire, complete, and integrated statement of each and every term and provision agreed by and among the Parties; it is not subject to any condition not provided for herein. This Agreement supersedes any prior agreements or understandings, whether written or oral, between and among the Representative Plaintiffs, the Class Members, Class Counsel, LivaNova and counsel for LivaNova regarding the subject matter of the Class Action or this Agreement. This Agreement may be amended or modified only by a written instrument signed by or on behalf of Class Counsel and counsel for LivaNova, and approved by the Court.

D. No Presumption Against Drafter

No Party shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement was

drafted with substantial input by counsel for the Parties, and no reliance was placed on any representation other than those contained herein.

E. Force Majeure

LivaNova shall not be liable for delay or non-performance of their obligations under this Agreement arising from any act of God, governmental act, and act of terrorism, war, fire, flood, explosion or civil riot. The performance of LivaNova's obligations under this Agreement, to the extent affected by the delay, shall be suspended for the period during which the cause of the delay persists.

F. Continuing and Exclusive Jurisdiction

The Court will have original and exclusive jurisdiction over all provisions of this Agreement, including the administration, supervision, interpretation and enforcement of this Agreement in accordance with its terms and any award of attorney's fees.

G. Counterparts

This Agreement may be executed in counterparts, each of which shall constitute an original. Scanned signatures shall be considered valid signatures as of the date submitted, although the original signature pages shall thereafter be appended to this Agreement.

H. Divisions and Headings

The division of this Agreement into paragraphs and the use of captions and headings in connection herewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

I. Plurals and Singulars of Defined Terms

Where a term is defined in plural and used in singular in the text, it means one such. Where a term is defined in singular is used in plural in a text, it means more than one such.

J. Governing Law

This Agreement is to be interpreted according to the substantive law of the Commonwealth of Pennsylvania, without regard to its choice of law or conflicts of laws principles.

K. Waiver

The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving Party. The waiver by any Party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

L. No Third-Party Beneficiaries

Except as otherwise provided herein, nothing in this Agreement is intended, nor shall it in any way be construed, to create or convey any rights in or to any person other than the Representative Plaintiffs, Class Members and the Released Parties.

M. Successors and Assigns

The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, except that no Class Member's right to receive medical monitoring as described in Paragraph II herein shall inure to the benefit of any other individual or entity.

N. Authority and Acknowledgment

Each person signing this Agreement on behalf of a Party represents and warrants that he or she has all the requisite power and authority to enter into this Agreement and to implement the terms contemplated herein and is duly authorized to execute this Agreement on behalf of that Party. By their signature or counsel's signature affixed hereto, each Party acknowledges that he or she has read this Agreement, fully understands the agreements, representations, covenants,

obligations, conditions, warranties, releases and terms contained herein, and has had the advice of counsel pertaining thereto, prior to the time of execution. Class Counsel acknowledge that they have authority to execute this Agreement and bind the Representative Plaintiffs and Class Members.

O. Construction

This Agreement shall be construed and interpreted to effectuate the Parties' intent, which is to resolve completely all Class Claims.

P. Notice

Any notices required under this Agreement shall be supplied as follows:

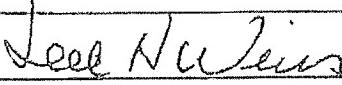
- (a) For the Certified Class, notice shall be supplied to:

Sol H. Weiss, Esquire
Anapol Weiss
One Logan Square
130 North 18th Street, Suite 1600
Philadelphia, PA 19103
Email: sweiss@anapolweiss.com
Phone: (215) 735-2098
Fax: (215) 875-7701

(b) For LivaNova, notice shall be supplied to:

Kenneth H. Zucker
Sean P. Fahey
Pepper Hamilton LLP
3000 Two Logan Square
Philadelphia, PA 19103
Email: zuckerk@pepperlaw.com
Email: faheys@pepperlaw.com
Phone: (215) 981-4000
Fax: (215) 981-4750

So Agreed on Behalf of the Class Members and Class Counsel:



Sol H. Weiss, Esquire
Anapol Weiss
One Logan Square
130 North 18th Street, Suite 1600
Philadelphia, PA 19103

Executed on 3-28-19.

So Agreed on Behalf of LivaNova Holding USA, Inc.:



Taylor Pollock

Executed on 3-28-19.